

1 The Hon. Tana Lin
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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9
10 UNITED STATES OF AMERICA,

Plaintiff,

11 v.
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13 ROBBY LEE ROBINSON,

14 Defendant.
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CASE NO. CR22-212TL

GOVERNMENT'S NOTICE RE
CONTENT OF OPENING
STATEMENT

16 The government is providing this notice in advance of the commencement of trial to
17 the Court and counsel concerning the proposed scope of its opening statement. Specifically,
18 the government intends to discuss facts relating to the alleged justification defense in its
19 opening statement, doing so in a way that does not presuppose, or comment on, whether the
20 defendant will testify.

21 As the Court is aware, in response to the government's motion to preclude
22 justification defense (Dkt. 39), the defendant – through his attorney – made a proffer as to
23 the alleged facts justifying his possession of firearms (Dkt. 50). The Court denied the
24 government's motion and allowed the defendant to pursue this defense (Dkt. 86). The
25 defendant has listed himself and his wife as witnesses at trial and they will presumably
26 testify in accordance with the proffer made by defense counsel. Thus, the defendant has
27 placed the justification defense squarely at issue in this case.
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1 The government has reached out to defense counsel and inquired whether, "In light of
 2 Judge Lin's order denying the government's motion to preclude the justification defense, do
 3 you have any objection to the government discussing this defense during its opening
 4 statement?" Defense counsel replied that: "The defense would object to any opening
 5 statement references by the prosecution to anticipated defense evidence, which may or may
 6 not be put on. Mr. Robinson has instructed me to wait until after the prosecution's opening
 7 statement to determine whether or not he will proceed with a justification defense or some
 8 other one."

9 It is the government's position that – so long as it does not comment on the
 10 defendant's right to testify – it should be free to discuss facts related to the justification
 11 defense and to flag for the jury why it is doing so. Accordingly, the government proposes to
 12 make a statement along the following lines during opening: "The government believes that
 13 the evidence presented at trial will demonstrate that the defendant's possession of firearms
 14 on November 8, 2022, was not justified by the need to defend himself or for any other
 15 reason." The government will then discuss facts relevant to this issue without discussing
 16 whether Robinson might or might not testify and without speculation as to what Robinson
 17 might say if he testified. That is, the government will not discuss statements made in the
 18 proffer that are not independently supported by evidence outside the proffer.

19 Any other approach would allow the defense to sandbag the government (by
 20 precluding the government from discussing a defense that the defendant has told the Court it
 21 intends to pursue) and will lead to confusion as the case is presented to the jury (as the
 22 government will be eliciting testimony from witnesses that directly relates to this defense).

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The government is making its position known in advance of trial so the defense may assert any objection, and the Court may rule upon this issue prior to opening statement to avoid having to litigate this question in the presence of the jury.

Respectfully dated this 25th day of September, 2023.

Respectfully submitted,

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